

ASSEMBLY BILL

No. 1042

Introduced by Assembly Member Harman

February 22, 2005

An act to amend Section 3291 of the Civil Code, and to amend Section 685.010 of the Code of Civil Procedure, relating to interest on judgments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1042, as introduced, Harman. Floating interest rate.

The California Constitution provides that the rate of interest upon a judgment shall be set by the Legislature at not more than 10% per annum, but permits that rate to be varied and based on interest rates charged by federal agencies or economic factors or both. Existing statutory law provides that interest accrues at the rate of 10% per annum on certain judgments.

This bill would instead provide that interest accrues at the federal short-term rate plus 3%, except as otherwise provided in a written contract, not to exceed 10% per annum on those judgments, as specified. The bill would require the Controller to annually establish the interest rate, as specified, and notify the auditor in each county of that rate.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3291 of the Civil Code is amended to
2 read:

1 3291. (a) In any action brought to recover damages for
2 personal injury sustained by any person resulting from or
3 occasioned by the tort of any other person, corporation,
4 association, or partnership, whether by negligence or by willful
5 intent of the other person, corporation, association, or
6 partnership, and whether the injury was fatal or otherwise, it is
7 lawful for the plaintiff in the complaint to claim interest on the
8 damages alleged as provided in this section.

9 (b) If the plaintiff makes an offer pursuant to Section 998 of
10 the Code of Civil Procedure which the defendant does not accept
11 prior to trial or within 30 days, whichever occurs first, and the
12 plaintiff obtains a more favorable judgment, the judgment shall
13 bear interest at the ~~legal rate of~~ *rate determined annually by the*
14 *Controller pursuant to subdivision (c), except as otherwise*
15 *provided in a written contract, not to exceed 10 percent per*
16 *annum calculated from the date of the plaintiff's first offer*
17 *pursuant to Section 998 of the Code of Civil Procedure which is*
18 *exceeded by the judgment, and interest shall accrue until the*
19 *satisfaction of judgment.*

20 (c) *On the 15th day of October of each year, the Controller*
21 *shall ascertain the current federal short-term rate. For purposes*
22 *of any section requiring interest to be computed at the rate per*
23 *annum required by this section, the federal short-term rate as*
24 *ascertained by the Controller, rounded to the nearest whole*
25 *number percent, plus 3 percent, in a total amount not to exceed*
26 *10 percent, shall be the interest rate per annum used in making*
27 *the computation for interest that accrues during the following*
28 *year. Within 10 days after the interest rate per annum is*
29 *determined under this section, the Controller shall notify the*
30 *auditor of each county in writing of that rate of interest.*

31 (d) *As used in this section, "federal short-term rate" means*
32 *the rate of the average market yield on outstanding marketable*
33 *obligations of the United States with remaining periods to*
34 *maturity of three years or less, as determined under Section 1274*
35 *of the Internal Revenue Code of 1986 (26 U.S.C. 1274), for July*
36 *of the current year.*

37 (e) This section shall not apply to a public entity, or to a public
38 employee for an act or omission within the scope of employment,
39 and neither the public entity nor the public employee shall be

1 liable, directly or indirectly, to any person for any interest
2 imposed by this section.

3 SEC. 2. Section 685.010 of the Code of Civil Procedure is
4 amended to read:

5 685.010. (a) Interest accrues at the ~~rate of~~ *rate determined*
6 *annually by the Controller pursuant to subdivision (b), except as*
7 *otherwise provided in a written contract, not to exceed 10*
8 *percent per annum on the principal amount of a money judgment*
9 *remaining unsatisfied.*

10 ~~(b) The Legislature reserves the right to change the rate of~~
11 ~~interest provided in subdivision (a) at any time to a rate of less~~
12 ~~than 10 percent per annum, regardless of the date of entry of the~~
13 ~~judgment or the date any obligation upon which the judgment is~~
14 ~~based was incurred. A change in the rate of interest may be made~~
15 ~~applicable only to the interest that accrues after the operative date~~
16 ~~of the statute that changes the rate. On the 15th day of October of~~
17 ~~each year, the Controller shall ascertain the current federal~~
18 ~~short-term rate. For purposes of any section requiring interest to~~
19 ~~be computed at the rate per annum required by this section, the~~
20 ~~federal short-term rate as ascertained by the Controller, rounded~~
21 ~~to the nearest whole number percent, plus 3 percent, in a total~~
22 ~~amount not to exceed 10 percent, shall be the interest rate per~~
23 ~~annum used in making the computation for interest that accrues~~
24 ~~during the following year. Within 10 days after the interest rate~~
25 ~~per annum is determined under this section, the Controller shall~~
26 ~~notify the auditor of each county in writing of that rate of~~
27 ~~interest.~~

28 (c) *As used in this section, "federal short-term rate" means*
29 *the rate of the average market yield on outstanding marketable*
30 *obligations of the United States with remaining periods to*
31 *maturity of three years or less, as determined under Section 1274*
32 *of the Internal Revenue Code of 1986 (26 U.S.C. 1274), for July*
33 *of the current year.*